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Calvin K. Simshaw
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September 8, 2006

VIA EMAIL AND OVERNIGHT MAIL

Ms. Kate Whitney
Montana Public Service Commission
Utility Division
1701 Prospect Avenue
Helena, MT 59620-2601

Re: CenturyTel's Response and Opposition to Petition Seeking Interim Order
– Docket No. D2006-8-121.

Dear Ms. Whitney:

Enclosed for filing, please find the original plus 10 of CenturyTel's Response and Opposition to Petition Seeking Interim Order in reference to Docket No. D2006-8-121.

Please contact me with any questions on this filing.

Sincerely,

Calvin K. Simshaw
Assoc. Gen. Counsel

CKS/rp
Encl.
cc: Service List

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF CENTURYTEL OF) UTILITY DIVISION
MONTANA, INC., Complaint by IDT America,)
Corp.) Docket No. D2006-8-121

**CENTURYTEL'S RESPONSE AND OPPOSITION
TO PETITION SEEKING INTERIM ORDER**

On August 31, 2006 IDT America, Corp. ("IDT") filed a Petition Seeking Interim Order. IDT requests that the Commission issue an order requiring that numbers be ported to IDT pending a ruling by the Commission on IDT's Complaint against CenturyTel of Montana, Inc. ("CenturyTel") in this docket. CenturyTel opposes this latest petition by IDT and submits that it should be rejected for the reasons described herein including:

- 1) IDT failed to serve its latest Petition on counsel for CenturyTel.
- 2) MCA §69-3-380 is already itself the expedited remedy in this matter.
- 3) Normal operation of Sections 251 and 252 of the Telecommunications Act of 1996 will already allow customers to switch service from CenturyTel to Bresnan while keeping their existing telephone number.

These and other shortcomings of IDT's petition are described in this response.

I. IDT's Failure to Serve its Petition on Counsel for CenturyTel

The manner in which IDT filed this latest petition is very suspect. The petition was filed via hand delivery to the Commission and the Hearing Examiner on August 31, 2006. That is the same day on which the Hearing Examiner conducted the scheduling conference in this matter. Counsel for IDT, Elana Shapochnikov and the undersigned

(Calvin Simshaw), counsel for CenturyTel, were physically present at the scheduling conference. Also present were Mary Wright of the Montana Consumer Counsel's office, Gary Duncan of the Commission Staff and Jerold Lambert, counsel for Bresnan Digital Services, LLC ('Bresnan').

The Hearing Examiner and others present at the scheduling conference had what was presumed to be a good faith discussion identifying and scheduling all necessary steps to litigate this matter. However, it now appears that IDT was not entirely forthcoming in those discussions. IDT was clearly intent on filing that very same day a pleading request that, if granted, would inject new steps and scheduling requirements into the process.¹ For example, the Petition at Paragraph 28 anticipates the need for an additional expedited hearing on this latest filing by IDT. Yet IDT made no reference to this filing at the scheduling conference and thereby denied the hearing Examiner and the other parties the opportunity to incorporate these additional factors into what was already a daunting scheduling task. This was a significant disservice to the hearings Examiner and the Commission.

More importantly, IDT failed to hand deliver a copy of the Petition to the undersigned counsel for CenturyTel that day despite the fact that counsel for IDT and counsel for CenturyTel were face to face for a good portion of the day. In fact, IDT has never served counsel for CenturyTel with a copy of the Petition. IDT cannot claim that it was unaware of the identity of CenturyTel's counsel and therefore had to resort to a generic nameless service to a CenturyTel corporate department, which is in fact what IDT did (see certificate of service attached to the Petition). As has already been mentioned,

¹ IDT's Petition Seeking Interim Order is 13 pages long with 36 footnotes. It obviously was prepared before the scheduling conference that was held the same day it was filed.

IDT was face to face with the undersigned who identified himself as CenturyTel counsel in this matter. It is also the case that the undersigned has previously been identified as counsel for CenturyTel on two pleadings earlier submitted in this matter.² Finally, IDT's Petition itself references at least five different occasions where IDT either sent correspondence to, received correspondence from, or had conversations with the undersigned as CenturyTel's counsel (see for example Exhibit B to the Petition).

IDT's failure to serve the Petition on CenturyTel's counsel can only be interpreted as an attempt to negate or minimize CenturyTel's ability to respond. A party's obligation to serve other parties under ARM 38.2.1205 cannot be fulfilled by making a generic nameless service to a corporate department when the filing party knows full well who specifically is acting as the other party's counsel. IDT's Petition should be rejected for failure to comply with ARM 38.2.1205.

II. MCA §69-3-830 is the Expedited Remedy Available to IDT

IDT has already availed itself of the expedited remedy designed to address its complaint. IDT filed its Complaint and Amended Complaint under MCA §69-3-380 which is entitled "Expedited Complaint Proceeding -- Procedure." That statute clearly was designed to provide a special expedited remedy for those petitioners who choose to invoke its specific procedural provisions. The statute lays out very specific guidelines as to how a complaint is to be processed so as to effectuate an expedited ruling. The statute provides that the Commission shall issue a ruling in no more than 120 days from filing of the complaint (§69-3-830 (8)). This is much faster than the Commission would normally process a docket involving complicated issues such as those raised in IDT's complaint.

² CenturyTel's Motion to Dismiss filed August 21, 2006 and CenturyTel Supplement to Motion Dismiss filed August 28, 2006.

MCA §69-3-308 is therefore in and of itself the remedy that the legislature has provided for those disputes that merit expedited treatment by the Commission.

The statute provides a fairly detailed process for the Commission to follow in granting expedited treatment. Had the legislature intended that the Commission also within that process consider interim relief pending what will already be an expedited ruling, the legislature could easily have included such a provision in the statute. It did not include such a provision, nor should it have, given the already expedited nature of proceedings under that statute.

IDT chose to file its Complaint and Amended Complaint under §69-3-830. Having done so, it must now live with the procedures set forth in that statute. To the extent there have been any delays, they have been of IDT's own making.³ The Commission cannot at this stage grant to IDT the very relief it is seeking in the pending complaint. To do so would be to prejudge the matter before CenturyTel has even had a chance to respond to the complaint.⁴ As appropriately noted very recently by the Iowa Utilities Board:

However, the Board believes that when the Complainants request an order granting affirmative relief, rather than one that merely maintains the status quo, they assume a somewhat heavier burden. This is particularly true when the emergency relief they request is substantially the same as the final relief they seek. As Iowa Telecom says, in some respects the Complainants are seeking a preliminary injunction that would grant them the final relief they seek without the necessity of trying the case. It would require a severe and immediate threat to the public health, safety, or welfare to justify that level of relief on an emergency basis.⁵

³ Note the Commission's granting of CenturyTel's Motion to Dismiss the original Petition and Complaint for failure to comply with the statute's noticing requirements. This necessarily led to a restarting of the 120 day clock.

⁴ Under §69-3-830 CenturyTel's response to the Amended Complaint is due September 28, 2006.

⁵ *In re: Sprint Telecommunications Company L.P. and MCC Telephony of Iowa, Inc. v. Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom*; Docket No. FCU 06-49; Order Denying Preliminary Injunction, issued September 5, 2006.

MCA §69-3-380 is the expedited remedy established by the legislature and invoked by IDT. That process is now in full motion. IDT cannot at the same time ask for more. IDT's request for relief that is even more expedited than that provided for in the statute should be rejected.

III. **Customers Desiring to Change Their Local Service From CenturyTel to Bresnan While Keeping Their Existing Telephone Number Can be Accommodated With the Normal Operation of Sections 251 and 252 of the Telecommunications Act of 1996**

In its Amended Petition and Complaint, IDT did actually present a fairly accurate statement of application of law pertaining to Local Number Portability ("LNP") when at Paragraph 11 it states:

Thus, when one of CenturyTel's customers chooses to switch his telephone service from CenturyTel to IDT, and wants to keep his telephone number, CenturyTel is required to port the number so long as IDT has a presence in the rate center.

However, in its Petition Seeking Interim Order, IDT has shifted gears somewhat. Instead of talking about customers who may want to change service from CenturyTel to IDT, IDT is now focused on customers who want to change their service from CenturyTel to Bresnan. Despite IDT's attempt to confuse the issue by intermingling these two different scenarios, there is an important distinction in at least one respect. Whereas, customers desiring to change their service from CenturyTel to IDT should have their number ported pursuant to an interconnection agreement between CenturyTel and IDT; customers desiring to change their service from CenturyTel to Bresnan should have their number ported pursuant to an interconnection agreement between CenturyTel and Bresnan.

To that end, on August 1, 2006 CenturyTel did receive a request from Bresnan to adopt an interconnection agreement with CenturyTel. A copy of Bresnan's letter requesting to enter into an interconnection agreement with CenturyTel in this manner is attached hereto as Exhibit A. CenturyTel sent to Bresnan the paperwork necessary to execute the adoption on the next day, August 2, 2006. Implementation of an interconnection agreement between CenturyTel and Bresnan by this adoption process would cover porting of numbers when a CenturyTel customer seeks to switch service to Bresnan while keeping their existing telephone number. Once the adoption is finalized (i.e. Bresnan returns the necessary paperwork) it can be filed with the Commission for review and approval.

In a good faith effort to expedite this process and accommodate those customers desiring to switch service from CenturyTel to Bresnan as soon as possible, CenturyTel did offer to begin porting numbers just as soon as Bresnan returns the paperwork for the agreement adoption. In other words CenturyTel agreed to port the numbers associated with customers choosing to switch their service to Bresnan even before the Commission had completed its review of the interconnection agreement covering such number porting. In making such offer CenturyTel assumed, under the circumstances, that the Commission would have no problem with such activity occurring before final Commission approval of the interconnection agreement between CenturyTel and Bresnan.

CenturyTel's offer in this regard was presented at the Commission's scheduling conference in this matter held August 31, 2006 at the Commission's office. A copy of the write-up describing the offer that was distributed at that time is attached hereto as Exhibit B. Counsel for Bresnan was present at the conference and reviewed the offer.

Bresnan has to this point rejected the offer. This does not change the fact that a process exists, initiated by Bresnan's August 1, 2006 request for an interconnection agreement (*Exhibit A*), that would allow numbers to be ported for customers desiring to switch service from CenturyTel to Bresnan. This process would allow the numbers to be ported within the normal flow and application of Sections 251 and 252 of the Telecommunications Act of 1996. More importantly, these numbers could then be ported in a matter of just a few days from now if Bresnan would send back the paper work to adopt the interconnection agreement.

IDT and Bresnan have offered no explanation as to why porting of numbers associated with customers who desire to change their service from CenturyTel to Bresnan could not, or should not occur pursuant to an interconnection agreement between CenturyTel and Bresnan, in other words, the very agreement that Bresnan asked for in its August 1 2006 request (*Exhibit A*). It is not as if Bresnan is not in the practice of entering interconnection agreements with ILECs. Bresnan has recently executed and filed with the Commission an interconnection agreement with Qwest.⁶

The second scenario would involve customers desiring to change their local service from CenturyTel to IDT. In these instances number porting should occur pursuant to an interconnection agreement between CenturyTel and IDT. Such interconnection agreement between CenturyTel and IDT already exists. However, IDT has made no allegation that there are any CenturyTel customers who have requested to have their local service switched from CenturyTel to IDT and CenturyTel has reason to believe there are no such customers.

⁶ See Notice issued August 30, 2006 In the Matter of the Application of Bresnan Broadband of Montana, LLC and Qwest Corporation Pursuant to Section 252(e) of the Telecommunications Act of 1996 for Approval of their Interconnection and Resale Agreement, Docket No. D2006.8.123.

Therefore, the situation at hand involves only those customers who have requested that their local service be switched from CenturyTel to Bresnan. Porting of numbers for those customers should occur under the normal operation of Section 251 and 252 of the Telecommunications Act of 1996. That is, pursuant to an interconnection agreement between CenturyTel and Bresnan. IDT in its Petition Seeking Interim Order is asking the Commission to circumvent the normal operation of Sections 251 and 252. It has provided no basis for the Commission to do so and the Petition should be denied.

For the reasons stated herein the Commission should reject and Deny IDT's Petition Seeking Interim Order.

Respectfully submitted this 8th day of September, 2006.

CENTURYTEL OF MONTANA, Inc.

By: _____

Calvin K. Simshaw
Assoc. Gen. Counsel

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BRESNAN

Communications

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www.bresnan.com

AUGUST 1, 2006

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

Jackie Phillips
Regional Director-Carrier Relations
CenturyTel
805 Broadway
Vancouver, WA 98660
Tel: (360) 905-6985
Fax: (360) 905-6811

jackie.phillips@centurytel.com

Re: Request for Section 252(i) Adoption to Establish an Interconnection
Agreement between Bresnan Digital Services, LLC and CenturyTel of
Montana, Inc. for the State of Montana

Dear Ms. Phillips:

Bresnan Digital Services, LLC parent of Bresnan Broadband of Montana, LLC ("Bresnan"), by its attorneys, hereby seeks to exercise its rights under Section 252(i) of the Communications Act of 1934, as amended ("Act"), and Section 51.809 of the Federal Communications Commission's rules¹ to adopt the interconnection agreement between CenturyTel of Montana, Inc. ("CenturyTel") and IDT America, Corp. filed with the Montana Public Service Commission ("Commission") on April 20, 2006 ("Agreement").

Attachment I to this letter contains the information necessary for processing Bresnan's adoption of the Agreement. Please provide us with the necessary documentation for review and signature within ten (10) days. If you have any questions regarding this request, please contact us. We appreciate your prompt attention to this matter.

Best regards,



Terold C. Lambert
Associate General Counsel

cc: Leonard Higgins
Kathy Kirchner
Robert Bresnan
Walter Eggers

¹ 47 U.S.C. § 252(i); 47 C.F.R. § 51.809.

Attachment 1

Section 252(i) Adoption Information for Bresnan Digital Services, LLC

Legal name: Bresnan Digital Services, LLC

Corporate information: Bresnan Digital Services, LLC

Principal Place of Business: 1 Manhattanville Road
Purchase, NY 10577

Contacts for notices: Jerry Lambert
1 Manhattanville Road
Purchase, NY 10577
(914) 641-3338
(914) 641-3438
jlambert@bresnan.com

with a copy to: Kathy Kirchner
Bresnan Communications
1860 Monad Road
Billings, MT 59102

INTERIM NUMBER PORTING PROPOSAL

Proposed by CenturyTel of Montana 8-31-06

On August 1, 2006 Bresnan Communications submitted a request to CenturyTel of Montana to adopt an existing CenturyTel interconnection agreement. That agreement would cover provision of local number porting.

On August 2, 2006 CenturyTel sent to Bresnan the paper work to execute such an adoption.

In anticipation that the Montana Commission would approve such an adoption, CenturyTel would agree to immediately port numbers associated with customers desiring to change their service from CenturyTel to Bresnan upon occurrence of the following:

Bresnan executes and returns to CenturyTel adoption of the interconnection agreement.

CenturyTel would not delay such porting for review and approval of the adoption by the Montana Commission.

CenturyTel would not delay such porting pending final resolution of this docket.

CenturyTel would process porting requests from Bresnan pursuant to the interconnection agreement, or

CenturyTel would process porting requests submitted by IDT on Bresnan's behalf if Bresnan indicates that IDT is acting as its authorized agent for purposes of submitting number porting requests associated with customers requesting to change their service from CenturyTel to Bresnan.

In this way customers desiring to change their service from CenturyTel to Bresnan and retain their current telephone number could do so in a matter of a few days.

CERTIFICATE OF SERVICE

I certify that I have this day served CenturyTel's Response and Opposition to Petition Seeking Interim Order, in regards to Docket No. D2006.8.121, by sending a copy via Email and Overnight mail, unless otherwise noted, to the parties as shown below:

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13 **VIA EMAIL AND US MAIL**

14 Jerold Lambert

15 Bresnan Communications

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18 jlambert@bresnan.com

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26
Dated this 8th day of September, 2006

By: _____
Rhonda Parisio



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September 12, 2006

Kate Whitney
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Public Service Commission
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RE: Docket No. D2006.8.121 - IDT's Reply to CenturyTel's Opposition

Dear Ms. Whitney:

Please find enclosed the original and ten copies of IDT America, Corp.'s ("IDT") Reply to CenturyTel of Montana, Inc.'s Response and Opposition to IDT's Petition Seeking Interim Order in the above proceeding.

This Reply is being mailed to the parties identified on the Certificate of Service enclosed. Should you require any additional information, please contact Elana Shapochnikov at (212) 692-6275.

Respectfully submitted,

Chérie R. Kiser

Counsel for IDT America, Corp.

cc: Service List

WDC 390597v.1

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

BOSTON | WASHINGTON | NEW YORK | STAMFORD | LOS ANGELES | PALO ALTO | SAN DIEGO | LONDON

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF CENTURYTEL OF)	UTILITY DIVISION
MONTANA, INC., Petition by IDT America,)	
Corp. Requesting the Commission)	Docket No. D2006.8.121
To Order CenturyTel to Honor IDT's Requests for)	
Local Number Portability Pending the Outcome of)	
IDT's Complaint Against CenturyTel)	

IDT'S REPLY TO CENTURYTEL'S OPPOSITION TO IDT'S PETITION SEEKING AN INTERIM ORDER

IDT America, Corp. ("IDT") files this Reply to CenturyTel of Montana, Inc.'s ("CenturyTel") Opposition filed with the Public Service Commission of the State of Montana ("Commission") on September 8, 2006 ("Opposition") in response to IDT's Petition Seeking Interim Order ("Petition") filed August 31, 2006.^{1/} CenturyTel's Opposition should be denied because:

- 1) IDT timely served CenturyTel and the inadvertent additional copy to Mr. Simshaw amounts to an error that should be disregarded;
- 2) CenturyTel has offered no legal support for its claim that MCA §69-3-830 prevents the interim relief requested by IDT's Petition; and
- 3) CenturyTel is in violation of the law; it cannot deny number portability to CenturyTel customers or ignore IDT's request to have those customers' numbers ported.

I. IDT Timely Filed Its Petition

Contrary to CenturyTel's characterization, there was nothing "suspect" or nefarious about the manner in which IDT filed its Petition. Pursuant to the Commission's rules, pleadings must

^{1/} IDT received a mailed copy of CenturyTel's Opposition on September 11, 2006.

be served by first class mail on all identified parties by the pleading party^{2/} before or concurrently with their filing with the Commission.^{3/} *Nothing in the Montana Statutes or* Commission rules requires service by personal hand delivery to opposing Counsel. Service is deemed concurrent if mailed the same day that the pleading is filed with the Commission.^{4/} IDT's Petition was filed when it was finalized, which was late in the day on August 31, 2006. IDT made a special effort to remain and file it by hand out of courtesy to the Commission since IDT counsel was in Montana. Although IDT inadvertently did not list Mr. Simshaw's name on its service list, IDT sent two copies of its Petition to the addresses listed in IDT's Interconnection Agreement with CenturyTel via overnight delivery that same day.^{5/} One of the addresses that IDT used is the same as the address listed for Mr. Simshaw on the signature page of CenturyTel's Opposition.

Montana Consumer Counsel, who was also present at the August 31, 2006 scheduling conference, was served in the same manner as CenturyTel. Montana Consumer Counsel did not object to service and filed in support of IDT's Petition on September 8, 2006. Most importantly, CenturyTel does not allege that it did not receive IDT's Petition or provide any concrete examples of prejudice it may have suffered. Indeed, CenturyTel has responded to the Petition well within the required 20-day period.^{6/} Pursuant to Montana law, any such oversight must be liberally construed because "errors or defects [] which do not mislead or affect the substantial

^{2/} Mont. Admin. Register § 38-2-1205(2).

^{3/} Mont. Admin. Register § 38-2-1205(3).

^{4/} Mont. Admin. Register § 38-2-313 (b).

^{5/} Interconnection Agreement between CenturyTel and IDT dated March 31, 2006, Article III § 31.

^{6/} Mont. Admin. Register § 38-2-1208.

rights of the parties involved shall be disregarded.”^{7/} The inadvertent exclusion of Mr. Simshaw *from the service list was unintentional and did not affect any of CenturyTel’s substantial rights* and does not support a denial of the Petition. Going forward, IDT commits to serve all pleadings directly on CenturyTel counsel, Mr. Simshaw.

II. The Commission Has Authority to Grant the Relief Requested in the Petition

The Expedited Complaint procedures do not limit IDT’s ability to seek redress for Montana customers through the instant Petition.^{8/} CenturyTel confuses the requests sought by the Petition and in the IDT Amended Complaint. While both IDT’s Amended Complaint and the Petition arise from the same CenturyTel violation of its porting obligations, they seek different relief. IDT’s Amended Complaint seeks a final order requiring CenturyTel to comply with its federal, state, and interconnection obligations to port on a permanent basis, while IDT’s Petition seeks an Interim Order from the Commission to provide relief to Montana consumers seeking to port their numbers in the interim while IDT’s Amended Complaint is pending. CenturyTel does not dispute the statutory authority cited by IDT in its Petition in support of the Commission’s authority to provide consumers with the requested interim relief.

Indeed, CenturyTel appears to recognize its obligation to port consumers’ numbers based on its proposed settlement. Its real issue is that it wants to dictate how porting requests will be made on behalf of consumers before it will honor those requests.^{9/} The purpose of the Act and the FCC rules is to protect consumers from this kind of anti-competitive interference by carriers in the selection of service providers. It is in the public interest that numbers be ported upon

^{7/} Mont. Admin. Register § 38-2-1206(1). “Any pleadings and documents shall be liberally construed and any errors or defects therein which do not mislead or affect the substantial rights of the parties involved shall be disregarded.”

^{8/} Opposition at 4.

^{9/} See, Petition Exhibit B containing IDT’s settlement proposal dated August 30, 2006 and CenturyTel’s response in its Opposition (pages 5-8).

request of consumers. CenturyTel has presented no authority to support its decision to ignore the law.

Grant of IDT's Petition would not pre-judge the outcome of IDT's Amended Complaint. The Commission can issue an Interim Order without prejudice to any decision it may release on IDT's Amended Complaint. The only support for denial of an interim order offered by CenturyTel is a decision by the Iowa Utilities Board,^{10/} which is distinguishable from the instant Petition, irrelevant to the Commission's decision on the Petition, and does not bind the Commission.^{11/} CenturyTel has failed to offer any relevant legal authority that would support a denial of IDT's Petition.

In addition, because consumers continue to be harmed by CenturyTel's failure to port and IDT's request is interim in nature, IDT urges the Commission to act swiftly on IDT's Petition, without a hearing, consistent with past practices on similar requests. The Commission has a long history of issuing Interim Orders without hearings to protect consumers pending hearings or final orders.^{12/}

^{10/} *In re: Sprint Telecommunications Company L.P. and MCC Telephony of Iowa, Inc. v. Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom*; Docket No. FCU 06-49; Order Denying Preliminary Injunction, issued September 5, 2006.

^{11/} Opposition at 4. The Iowa case cited by CenturyTel involved Petitioner's failure to meet its burden for emergency injunctive relief to enforce an arbitration agreement under specific provisions of the Iowa Code. Neither the facts of the Iowa case, nor the Iowa Code applies to IDT's Petition in Montana.

^{12/} See e.g., *In the Matter of NorthWestern Energy, Annual Application for Approval of Monthly Gas Tracker True-Up, Projected Gas Costs and Gas Transportation Balance*, Order No. 6741a in PSC Docket No. D2006.5.58, service date June 30, 2006 (permitting use of an interim tracking methodology and interim rates pending a hearing or final order); *In the Matter of NorthWestern Energy, Montana-Dakota Utilities Co., and Energy West Montana, Expansion of Winter-Months "Moratorium" on Termination for Qualifying Customers*, Order No. 6696 in PSC Docket No. D2005.9.145, service date September 28, 2005 (ordering expanded protection for customers on an interim basis without a hearing to relieve increased burdens on customers in remedying bill deficiencies and obtaining restored service until further action by the Commission); *In the Matter of Tariff Transmittal QCC03-01 by Qwest Communications Corporation Initial Tariff and Price List for Qwest Communications Corporation*, Order No. 6523c in PSC Docket No. D2003.10.153, service date February 20, 2004 (approving a tariff on a limited interim basis pending the outcome of the hearing in that docket); *In the Matter of Application of US WEST Communications, Inc. for Authority to Flexibly Price Regulated Telecommunications Services in Certain Local Exchanges*, Order No. 5998a in PSC Docket No. D97.7.125, service date August 29, 1997 (authorizing flexible pricing on an interim basis pending a hearing and final order).

III. CenturyTel is in Violation of the Law; It Cannot Dictate Direct Interconnection or Deny Non-Carriers Access to Interconnection Services

As illustrated in Exhibit B to IDT's Petition, IDT counsel contacted CenturyTel's counsel on August 23, 2006 (a full eight days before the scheduling conference) in a good faith effort to encourage CenturyTel to port the numbers of its Montana customers on an interim basis pending the outcome of IDT's Amended Complaint in Docket D2006.8.121. CenturyTel refused. On August 30, in a final good faith attempt to help Montana consumers exercise their right to port their numbers to the service of their choice, IDT sent CenturyTel a letter reiterating its request. On August 31, 2006, during the scheduling conference on IDT's Amended Complaint, CenturyTel essentially refused IDT's informal request to grant Montana consumers interim relief when it presented its "settlement" offer to IDT. This offer is unacceptable because it fails to acknowledge CenturyTel's legal obligation to port numbers as a carrier.^{13/} CenturyTel and every local exchange carrier must port numbers whether they are porting the numbers for a direct customer of a carrier or indirectly for the carrier's customer's subscribers.

Despite the clarity of the law, CenturyTel states that it will only port numbers if Bresnan signs an Interconnection Agreement. CenturyTel's response fails to address all of the case law and legal precedent cited in IDT's Petition and Amended Complaint outlining CenturyTel's

^{13/} CenturyTel and IDT are obligated under the law to fulfill requests to port customer numbers. 47 U.S.C. § 251(b)(2). Local number portability is defined as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(k). Any "wireline carrier that is certified (or has applied for certification) to provide local exchange service in any state ... must be permitted to make a request for deployment of number portability." 47 C.F.R. § 52.23(b)(2)(i). "All facilities-based LECs shall provide number portability so that end users may retain the same telephone number as they change from one service provider to another as long as they remain at the same location or if moving, retain the same NXX code." Mont. Admin. Register § 38-5-4074. Adopting the 1996 Act's definition of number portability, the Montana Administrative Code defines "number portability" as "the ability of users of telecommunication services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one telecommunications carrier to another." Mont. Admin. Register § 38-5-4002(16).

obligations to port its customers' numbers to the service of their choice. CenturyTel further *ignores Bresnan's end user status as a voice over Internet protocol ("VoIP") service provider and fails to address its violations of federal and Montana laws cited throughout IDT's Petition.* CenturyTel's arguments amount to nothing more than a request to deny Montana customers their right to port their numbers simply because CenturyTel says so.

CenturyTel repeats that IDT has made no "allegation that there are any CenturyTel customers who have requested to have their local service switched from CenturyTel to IDT and CenturyTel has reason to believe there are no such customers."^{14/} CenturyTel's statement is precisely the basis of IDT's complaint. As stated in IDT's Petition and Amended Complaint, CenturyTel has no right to question the identity of IDT's customers when a local number portability request is made and IDT has no obligation to identify its customers to CenturyTel prior to requesting a port on their behalf. Acceptance of CenturyTel's settlement would gut the requirements of § 251(a), which permits direct or indirect interconnection, the *Vonage Order*, and the *E911 Order*.^{15/} Carriers are required to provide interconnection services directly or indirectly. Those service providers who do not have rights as carriers under § 251 such as interconnected VoIP service providers and information service providers, who are dependent on transmission and interconnection related services in order to offer their services to their subscribers, cannot be denied service because they are not carriers. Moreover, carriers, who do have interconnection rights under § 251, cannot be forced to directly interconnect to obtain service as CenturyTel suggests Bresnan must do. It is as if CenturyTel is in denial of the

^{14/} Opposition at 7.

^{15/} See, 47 U.S.C. § 251(a); *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd. 22404, 22404-05, ¶ 1 (2004) ("*Vonage Order*"); *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, First Report and Order and NPRM, 20 FCC Rcd. 10245 (2005) ("*E911 VoIP Order*").

existence of legal precedent spanning the past twenty years. If CenturyTel's inaccurate *representation of the law as set forth in its settlement proposal and Reply* were permitted to prevail, only those Montana state registered carriers directly interconnecting with CenturyTel would receive the benefits of § 251 of the Act. This interpretation of the law is wrong based on the plain language of the statute, the FCC's implementing rules, and well-developed case law,^{16/} is inconsistent with the goal to promote competition for the benefit of consumers, and likely accounts for CenturyTel's failure to provide any relevant legal support.

Montana customers should not be denied their right to port their numbers because of CenturyTel's unilateral actions that are based on unfounded and inaccurate interpretations of law. CenturyTel must execute all ports made by its customers through IDT. As stated in IDT's Petition, CenturyTel may only be excused from market opening requirements, such as number portability, by petitioning the Commission for a suspension or modification of its § 251(b) obligations.^{17/} CenturyTel has filed no such petition.^{18/}

In light of the foregoing, IDT respectfully requests the Commission reject CenturyTel's Opposition to IDT's Petition and require CenturyTel to honor all local number portability

^{16/} 47 U.S.C. § 251 (a)(1) ("Each telecommunications carrier has the duty...to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers..."; *In re Telephone Number Portability*, First Report and Order & Further Notice of Proposed Rulemaking, 11 FCC Rcd. 8352 ¶ 2 (1996) ("*First Report and Order*"); Telephone Number Portability, CC Docket No. 95-116, *Second Report and Order*, 12 FCC Rcd. 12,281 (1997) ("*Second Report and Order*") (The Federal Communications Commission ("FCC") adopted broad porting requirements, noting that "as a practical matter, [the porting obligation] requires LECs to provide number portability to other telecommunications carriers providing local exchange or exchange access service within the same MSA."); *In the Matter of Telephone Number Portability; CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, Memorandum Opinion and Order & Further Notice of Proposed Rulemaking, 18 FCC Rcd. 23697 ¶ 6 (rel. Nov. 10, 2003) ("*Wireless-to-Wireless Order*") ("[A]ny wireline carrier that is certified ... to provide local exchange service, or any licensed CMRS provider, must be permitted to make a request for the provision of number portability." And clarifying that wireline carriers may not require wireless carriers to enter into interconnection agreements as a precondition to porting between the carriers.)

^{17/} 47 U.S.C. § 251(f) (2) (providing that a local exchange carrier with less than two percent of the Nation's subscriber lines may "petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c)").

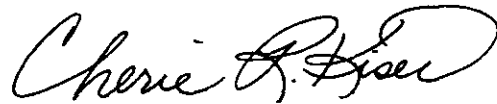
^{18/} IDT Amended Complaint ¶ 26; Petition ¶ 24.

requests made by CenturyTel customers as submitted by IDT pending a ruling on IDT's

Amended Complaint against CenturyTel in Docket No. D2006.8.121 and grant to IDT any and all other relief to which it may be entitled.

Respectfully submitted this 12th day of September, 2006.

IDT America, Corp.



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DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF CENTURYTEL OF)	UTILITY DIVISION
MONTANA, INC., Petition by IDT America,)	
Corp. Requesting the Commission)	Docket No. D2006.8.121
To Order CenturyTel to Honor IDT's Requests for)	
Local Number Portability Pending the Outcome of)	
IDT's Complaint Against CenturyTel)	

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the IDT's Reply to CenturyTel's Opposition to IDT's Petition Seeking an Interim Order to be served by overnight mail on this date to the Parties as shown below:

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